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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR     | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|--------------------------|---------------------|------------------|
| 09/746,919      | 12/22/2000  | Howard Marcellus Johnson | 5600-0001.37        | 2742             |

22918 7590 01/28/2003

PERKINS COIE LLP  
P.O. BOX 2168  
MENLO PARK, CA 94026

| EXAMINER |
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SEHARASEYON, JEGATHEESAN

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1647

DATE MAILED: 01/28/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/746,919

Applicant(s)

JOHNSON ET AL.

Examiner

Jegatheesan Seharaseyon

Art Unit

1647

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 66-71 and 97 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 66-70 and 97 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 71 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 16.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This office action is in response to the amendment, response and terminal disclaimer filed on 11/25/02 in Paper numbers 13-15. Applicant has canceled claims 55-59 and 96. Claims 66-71 and 97 are pending.

#### ***Claim Rejections - 35 USC § 112, second paragraph withdrawn***

2. Applicants arguments are persuasive, thus the rejection of claim 66 and 97 are withdrawn.

#### ***Claim Rejections - 35 USC § 103 withdrawn***

3. Applicants arguments with respect to lack of teachings with respect to the ovine interferon- $\tau$  dosage is persuasive. Thus, the rejection of claims 66-71 and 97 are withdrawn.

#### ***Double Patenting rejection withdrawn***

4. Applicant has provided a terminal disclaimer to obviate the double patenting rejection.

5. Applicants representatives were advised numerous times of the allowable subject in the claims provided Applicants amend claim 71 to contain only SEQ ID NO: 2 (the full length polypeptide). It should be noted that as indicated in Paper No: 11, the different polypeptide sequences are fragments of SEQ ID NO: 2 and do not share a common core sequence are not the elected invention. In addition, the previously allowed patent (U. S. PATENT NO: 5,942,223) also was limited to SEQ ID NO: 2.

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6. This application is in condition for allowance except for the following formal matters:

Applicant needs to amend claim 71 contain only SEQ ID NO: 2 to put this case in condition for allowance. Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

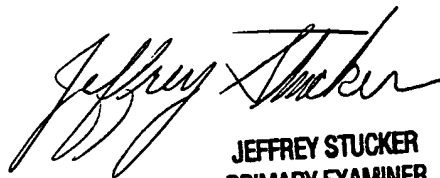
#### **Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jegatheesan Seharaseyon whose telephone number is 703-305-1112. The examiner can normally be reached on M-F: 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 703-308-4623. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-4227 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

JS  
January 24, 2003



**JEFFREY STUCKER**  
**PRIMARY EXAMINER**